19 48

File No. O. Elec (Surcharge) — 48

K

Legal **DEPARTMENT**

A. **BRANCH**

Subject:— Opinions Under Bombay Electricity — (Surcharge) Act, 1946

P 8 E

File No. O. Elec. Surcharge/48

Std. Scott Slip 24-B.

477 A.

CONTENTS

Legal Department File No. O. Misc (surcharge) /48

Serial No.	Compilation No.	Subject	pages
		Opinions under the Bombay Electricity (surcharge) Act 1946	
1.	R I No. 7228 7/6/1948	S 4:-	
	O.No. 8780 18/9/1948	No-variation of surcharge irrespect of individual consumers	1-4
2.	R I No 8002 25/6/1948	S 4-	
	O.No. 8862 21/9/1948	Whether the company would be competent to levy surcharge over the enhanced rate for the supply at electric energy	5.

M.R. D
64/56

IMP
8.4.48

L.D.R.I. No. 7232
Dated 9-6-1948.

Submitted.

2. The facts of the case are:-

The Udvada Vapi Epectric Supply (permitted to levy a 33⅓ rate of war costs surcharge in Govt. order No. 6331/36 dated 9-8-1944. This levy of surcharge was continued under the provisions of section 5 of the Bombay Electricity (Surcharge) Act, 1946.

In its letter dated 6th April 1948 the Udvada Wapi Electric supply Co. Ltd. informed Govt. in P.W.D. that the Grampanchayat Udwada and the Gamanchayat Vapi refused to pay the War Costs surcharge. The position of both the Grampanchayats is financially poor and therefore requested Govt. to exempt them from payment of the surcharge.

The ElætricalEngineer to Govt. is of the opinion that Govt. cannot exempt the 2 Grampanchayats from payment of the surcharge. The licensee would have to recover it through a Court of law.

The Dy.Secy. P.W.D., remarks that clause 4 of the Bombay Electricity (Surcharge) Act, 1946 would indicate that once the surcharge is fixed by Govt. it would not be correct for the licensee to change the surcharge without approval of Govt. The approval would be for a General change in such cases and no exceptions in individual cases are meant. It does not appear proper for Govt. to make exceptions in individual cases re; surcharge. and has therefore referred the papers to to the R.L.A.

The question raised for the R.L.A'S consideration is whether Govt. sanction is necessary to exempt the levy of surcharge and whether Govt. can exempt the levy of surcharge in individual cases.

3. Section 4 of the Bombay Electricity (Surcharge) Act, 1946, provides that upon the rate of surcharge fixed by the Provincial Government from time to time in accordance with this Act, it shall not be lawful for the licensee or sanction holder concerned except with the previous sanction of the Provincial Govt. to charge at other than charges surcharged at the rate for the timebeing so fixed.

In these cases the licensee by exempting the 2 Grampanchayats from paying the surcharge will be charging other than the rates surcharged and the sanction of the ProvincialGovt. will be necessary for such exemption. But a generalsanction will not be essential because the Primary object of the Act is to confer on the licensee a right to levy surcharge and by exempting these cases from payment of the surcharge the licensee is merely refraining from exercising his right in individual cases.

Sd/-
3/7/46

A A S

Please look up files 1944 to 1946. A similer question was comitted under the surcharge order issued under the rules.

Sd/-
3/7

In exercise of power conferred by clause 4(1) of the Bombay Electiricity (Licensed Undertakings' War Costs) Order, 1944, Government fixed, with effect from 9-8-44, the rate of War Costs Surcharge in respect of the undertakings of the licensees and the sanction holders mentioned in column 1 of the Schedule annexed to P.W.D. notification N. 6331/36 dated 9-8-44,

PP 7-8 of P.W.D. file 7014/36

dated 9/8/44, at the percentum shown against each of them in column 2 of the schedule The charges thenexisting and applied under P:W.D. Notification No. 6041/36 dated 11-3- were withdrawn with effect from the date of the Order (9-8-44). Para 2 of the Notification No 6331/36 dated 9-8-44 provides:-

"It shall not be lawful for the said licensees and the sanction holder to supply energy at other than charges

M.R.D.
6/4/56

Office of the R.L.A. 5

Bombay Electricity (Surcharge) Act, 1946.
S. 4.
Re:-Variation of Surcharge in respect of individual consumers.

The view taken by Deputy Secretary P.W.D. is correct. No doubt surcharges can be varied with the sanction of Governent under section 4 of the Bombay Electricity (Surcharge) Act, 1946; but such variation can be sanctioned with respect to consumers as a whole and not with respect to certain individual consumers.

Sd/-
14/9

Remembrancer of Legal Affairs.

U.R. to P.W.D. No, 8780 Dated the 15th September 1948

M.R.D
614156

R.I. No. 8002
Dated 28-6-48.

Submitted with reference to P.W.D. note at page 209 ante.

The Godhra Electric Supply Co. which was leaving 15 % surcharge was allowed to increase the surcharge ra rate to 20%. The Company again applied for an increase in the surcharge to 30% as the financialcondtion of the Company was not satisfactory and was consequently runni ing at a loss due tothe rise of cost of fuel, coal, wages of the employees etc. As the Company could not b allowed to increase the same (because the maximum that was fixed by section 3 sub-sec. 3(b) Bombay Electri- city Surcharge Act 1946 was 20% in case of umdrtakings where steam is used for the generation of energy)P.W.D. requestedR.D. to sellfuel from theforest coupes to the Company at concessional rate; which R.D. did for some t ime. As R.D. is not at present willing to give fuel tothe Company at concession rates and suggests that the Company may bid at auction sales and that the P.W.D. may give it cash grants, The Electricalem Engineer does not favour this view. Hence the D.S. P.W.D. suggests as follows:-

"Since R.D. is not agreeable to accept the P.W.D. proposal, the only way to save the Company from finan- cial ruin is to permit it to levy the maximum rate of as.6/- per unit for general public supply purposes. At present the Company is charging the rate of Rs. 0-4-9 per unit in confirmity with the agreement with the Godhra Municipality. R.L.A has opined that it

has ppinmd that it would not be competent for Company to raise the agreed rate It has been stated that any increase in the existing rates of the Company will be opposed by the Municipality and other consumers "However R.L.A|S opinion(No.9107 dated 6-12-45 mentioned by the S.S. P.W.D. above) willnot come in the way of the P.W.D. in permitting the Company to increase the rates to as. 0-6-0 because the Godhra Municipality has waived its right to run enforce clause 8 of the agreement by which the company has agreed to supply electric energy to the Municipality at the rate of as. 0-4-9 per unit. However the question raised for the consideration of the R.L.A is whether in view of section 4 of the Bombay Elstricity (Surcharge) Act, 1946, the Company would be competent to levy surcharge over the enhanced rate for the supply of elestric energy.

3. Section 4 of the Bombay Electricity Surcharge Act runs as Follows:-

"Upon the rate of surcharge being fixed by the Provincial Government from time to time in accordance with this Act, it shall not be lawful for the licensee or sanction holder concerned except with the Previous sanction of the Provincial Govt. to charge at other thancharges surcharged at the rate for the time being sofixed."

"Provided that nosurcharge or any subsequent revision thereof shall affect charges leviable for any period not covered by the relevant order of the provincial Government." All that the section means is that the licensee or the sanction-holder shall not charge at charges other that charges surcharged at the rate for the time being so fixed except with the privious

M.R.D. F/4/58

Office of the R.L.A.

The presumption made by the P.W.D. in para 3 of its office note would be correct provided the municipality executes a fresh agreement enybodying the term of the present resolution inmodification of condtion 8 of the orrginal agreement.

The view taken by P.W.D. inpara 4 of its office note is not correct. Section 4 of the Bombay Electricity (Surcharge) Act, 1946 only prevents variation in the fixed rate of surcharge without the previous sanction of Government. In the present case there would be nosuch variation in the fixed rate of surcha althoughthere would be a variation in the charges for energy as per resolution of the Municipality.

Sd/-
26/9

Remembrancer of Legal Affairs.

U.R. to P.W.D. No 8953

Dated the 21st September 1948.

M.R.B.
6/4/56.